

ASSEMBLY BILL

No. 1301

Introduced by Assembly Member Jones-Sawyer

February 27, 2015

An act to add Chapter 5 (commencing with Section 400) to Division 0.5 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1301, as introduced, Jones-Sawyer. Voting rights: preclearance.

Existing law, the federal Voting Rights Act of 1965, provides that a change in voting procedures may not take effect in a state or political subdivision that is covered by the preclearance requirements of the federal act until the change is approved by a specified federal authority. A state or political subdivision is covered by the preclearance requirements of the federal act if it maintained a specified test or device as a prerequisite to voting, and had low voter registration or turnout, in the 1960s and early 1970s. The federal act allows a state or political subdivision covered by the act to obtain an exemption from the preclearance requirements if it satisfies specified criteria. The United States Supreme Court has held that the coverage formula of the federal act is unconstitutional and may not be used as a basis for requiring a jurisdiction to subject a proposed change in voting procedures to federal preclearance. Prior to that holding, the Counties of Kings, Monterey, and Yuba were covered jurisdictions subject to the federal preclearance requirements.

This bill would establish a state preclearance system. Under this system, if a political subdivision enacts or seeks to administer a voting-related law, regulation, or policy, as specified, that is different from that in force or effect on the date this act is enacted, the governing

body of the political subdivision would be required to submit the law, regulation, or policy to the Secretary of State for approval. The bill would require the Secretary of State to approve the law, regulation, or policy only if specified conditions are met. The bill would provide that the law, regulation, or policy shall not take effect or be administered in the political subdivision until the law, regulation, or policy is approved by the Secretary of State, except as specified. The bill would allow the governing body of the political subdivision to seek review of the Secretary of State's decision by means of an action filed in the Superior Court of Sacramento.

By requiring local governments to seek approval of the Secretary of State for changes to voting procedures, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5 (commencing with Section 400) is
2 added to Division 0.5 of the Elections Code, to read:

3
4 CHAPTER 5. STATE PRECLEARANCE

5
6 400. For purposes of this chapter, the following terms have the
7 following meanings:

8 (a) "Citizen" means a citizen of the United States.

9 (b) "Citizen voting-age population" means the population of
10 citizens who are 18 years of age or older within a political
11 subdivision, as calculated by the United States Census Bureau in
12 the most recent federal decennial census.

13 (c) "Electoral jurisdiction" means a geographic area within
14 which reside the voters who are qualified to vote for an elective
15 office.

1 (d) “Multilingual voting materials” means registration or voting
2 notices, forms, instructions, assistance, or other materials or
3 information relating to the electoral process, including ballots,
4 provided in the language of one or more language minority groups.

5 (e) “Political subdivision” means a geographic area of
6 representation created for the provision of government services,
7 including, but not limited to, a city, a school district, a community
8 college district, or other district organized pursuant to state law.

9 (f) “Protected class” means a class of voters who are members
10 of a race, color, or language minority group, as this class is
11 referenced and defined in the federal Voting Rights Act of 1965
12 (52 U.S.C. Sec. 10101 et seq.).

13 (g) “Voting locations” means places for casting a ballot.

14 401. To ensure that the right of citizens who reside in California
15 to vote is not denied or abridged on account of race, color, or
16 language minority status through the enforcement of a
17 voting-related law, regulation, or policy that is enacted or
18 administered after the enactment date of this chapter, the following
19 voting-related laws, regulations, and policies shall be subject to
20 this chapter:

21 (a) A change to an at-large method of election that adds offices
22 elected at-large or converts offices elected by single-member
23 districts to one or more at-large or multimember districts.

24 (b) A change to the boundaries of an electoral jurisdiction, or
25 a series of changes within a year to the boundaries of an electoral
26 jurisdiction, that reduces the proportion of the citizen voting-age
27 population that are members of a single protected class by 5 or
28 more percent.

29 (c) A change through redistricting that alters the boundaries of
30 districts within an electoral jurisdiction in which a single protected
31 class has experienced a population increase of at least 25,000
32 residents or at least 20 percent of the citizen voting-age population
33 of the protected class over the preceding decade, as determined
34 by the five-year estimates of the United States Census American
35 Community Survey.

36 (d) A change to voting locations that reduces, consolidates, or
37 relocates one or more voting locations, including an early, absentee,
38 or election day voting location, and results in a net loss, on a per
39 voter basis, of voting locations in the 20 percent of the total number
40 of census tracts in a political subdivision with the highest

1 proportion of voters from a single protected class that represents
2 at least 20 percent of the citizen voting-age population in the
3 political subdivision, provided that the net loss is greater than the
4 net loss resulting from the changes in the 20 percent of the total
5 number of census tracts in a political subdivision with the highest
6 proportion of voters of any other racial or ethnic group that
7 represents at least 20 percent of the citizen voting-age population
8 in the political subdivision.

9 (e) A change to multilingual voting materials that reduces the
10 voting materials available in languages other than English, or that
11 alters the manner in which the materials are provided or distributed,
12 if no similar reduction or alteration occurred in materials provided
13 in English.

14 402. (a) If a political subdivision enacts or seeks to administer
15 a voting-related law, regulation, or policy described in Section 401
16 that is different from that in force or effect on the date this chapter
17 is enacted, the governing body of the political subdivision shall
18 submit the law, regulation, or policy to the Secretary of State for
19 approval. The law, regulation, or policy shall not take effect or be
20 administered in the political subdivision until the law, regulation,
21 or policy is approved by the Secretary of State.

22 (b) The Secretary of State shall provide a written decision to
23 the governing body of the political subdivision within 60 days of
24 a request to enact or administer a voting-related law, regulation,
25 or policy described in Section 401. If the Secretary of State fails
26 to provide a written decision within 60 days, the governing body
27 of the political subdivision may implement the law, regulation, or
28 policy. The governing body of the political subdivision may make
29 a written request for an expedited review of a law, regulation, or
30 policy if the political subdivision has a demonstrated need to
31 implement the proposed change before the end of the 60-day review
32 period. The written request shall describe the basis for the request
33 in light of conditions in the political subdivision and shall specify
34 the date by which a decision is needed. The Secretary of State shall
35 attempt to accommodate a reasonable request.

36 (c) The governing body of the political subdivision shall have
37 the burden of establishing, by objective and compelling evidence,
38 that the law, regulation, or policy satisfies both of the following:

39 (1) Is not likely to result in a discriminatory effect on the
40 participation of voters from a protected class that constitutes at

1 least 20 percent of the political subdivision's citizen voting-age
2 population.

3 (2) Is not motivated in whole or substantially in part by an intent
4 to reduce the participation of voters from a protected class.

5 (d) If the Secretary of State denies a request to enact or
6 administer a law, regulation, or policy, the governing body of the
7 political subdivision may seek review of the decision by means of
8 an action filed in superior court.

9 (e) The Secretary of State may file suit to enjoin the governing
10 body of a political subdivision from implementing a law,
11 regulation, or policy in violation of this section.

12 (f) Venue for an action filed pursuant to subdivision (d) or (e)
13 shall lie exclusively in the Superior Court for the County of
14 Sacramento.

15 (g) Notwithstanding any other law, a political subdivision may
16 enact or administer a voting-related law, regulation, or policy
17 described in Section 401 that is different from that in force or effect
18 on the date this chapter is enacted if doing so is necessary because
19 of an unexpected circumstance that occurred during the 30 days
20 immediately preceding an election, in which case the political
21 subdivision may enact or administer the law, regulation, or policy
22 only for purposes of that election. After the election, the political
23 subdivision shall immediately submit the law, regulation, or policy
24 to the Secretary of State for approval pursuant to this section.

25 403. A political subdivision with two or more racial or ethnic
26 groups that each represent at least 20 percent of the citizen
27 voting-age population in the political subdivision shall not
28 implement a previously enacted or adopted voting-related law,
29 regulation, or policy described in Section 401 that has not yet been
30 implemented, unless the law, regulation, or policy is approved
31 pursuant to Section 402.

32 404. (a) The Attorney General, or a registered voter who
33 resides in a political subdivision where the change to a
34 voting-related law, regulation, or policy occurred, may file an
35 action in superior court to compel the political subdivision to satisfy
36 the obligations set forth in this chapter.

37 (b) In an action brought pursuant to this section, a court shall
38 provide as a remedy that the voting-related law, regulation, or
39 policy be enjoined unless the court determines that the law,

1 regulation, or policy is not subject to this chapter or has been
2 approved by the procedures established in Section 402.

3 405. For purposes of this chapter, any data provided by the
4 United States Census Bureau, whether based on enumeration or
5 statistical sampling, shall not be subject to challenge or review by
6 any court.

7 SEC. 2. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.